

MEMORANDUM OF LAW

JURISDICTION A CONSTITUTIONAL REQUIREMENT

- 1.] Indisputably. it is the Constitution which sets the limits of the territorial jurisdiction of all branches of the federal government. The United States (a municipal corporation designed to govern the District of Columbia. its territories Guam. Puerto Rico. U.S. Virgin Islands. forts. lands and properties it owns. its employees). It is a well established principle of law and fact that "all federal legislation applies only within the territorial jurisdiction of the United States unless a contrary intent appears". Legislative authority/jurisdiction appears in the Constitution at Article I. Section 8. Clause 17. these bounds/limits upon where the Congress has power. Authority. jurisdiction to create the "Laws" in which the Administration and Courts have the authority/jurisdiction to prosecute those laws. See exact wording of Article I. Section 8. Clause 17. which granted authority. said authority does not extend everywhere or over the land of the 50 union States.
- 2.] There is no presumption or assumption in favor of jurisdiction. and the basis of jurisdiction must be affirmatively shown. This long term rule of law applies. and never fades. a court hearing a criminal matter. as in this alleged case No. 03-00502-SOM is always in error if it fails to place its claim to territorial jurisdiction upon the record and is open to attack even years later.
- 3.] It is axiomatic that the prosecution must prove territorial jurisdiction over a crime in order to sustain a conviction. therefore. The jurisdictional challenge issue can never be waived by the Accused. nor acquiesced by the Accused. in the absent of a positive showing upon the record that the jurisdiction was clearly and unambiguously established.
- 4.] In principle. the exclusive legislative jurisdiction of the federal government is not addressed to subject matter. but to geographical location.

5.1 Without proof of the requisite ownership or possession by the United States, the crime has not been made out. It seem only by "Color of Law, office, authority and process" in the legislative/administrative courts of the United States can we be forced into a status of subject/slave of a foreign municipal corporation, by mere assumption/presumption and thereby be immediately divested of standing in judicio.

6.] In criminal prosecutions, where the federal government is the moving party, it must not only establish ownership of the property upon which the crime was allegedly committed, but it must also produce documentation that the State has ceded to it jurisdiction over the property where the alleged crime was committed.

7.] All courts of justice are duty bound to take judicial notice of the territorial extent of its iurisdiction, although those acts are not formally put into evidence, nor in accord with pleadings.

8.] Where a federal court is without iurisdiction (territorially) of the offense, judgement of conviction of the court and/or jury is void ab initio, on its face.

9.] Federal criminal iurisdiction is never presumed: (execpt in this instance) it must always be proven: and it can never be waived.

10.] The United States District Court's creation and composistion were accomplished by an Act of Congress on June 25th, 1948 [62 Stat. 895], and November 13th, 1963 [77 Stat. 331], currently codified at 28 U.S.C. § 133: and the iurisdiction thereof is listed in Chapter 85 of Title 28, lists civil, admiralty, maritime, patent, bankruptcy, etc... it does not list or mention or describe criminal iurisdiction whatsoever!

11.] Acts of Congress creating the United States District Courts did not vest the said courts with any criminal iurisdiction: these courts only have the authority as vested by Congress under the Constitution.

12.] The United States District Court is not a court of general iurisdiction, has only the power Congress bestowed.

13.] It is apparent that the United States District Court for the District of Hawaii was created and established under the same 28 U.S.C. 132, and its jurisdiction is defined and limited by Congress and the Constitution as stated in Chapter 85 of Title 28, U.S.C., the appropriate jurisdiction for criminal violations is found under Title 18 U.S.C. Section 3231, which specifically names the "district courts of the United States". Yes there is a distinct difference between United States District Courts and District Courts of the United States. The words "District Courts of the United States" commonly describes Constitutional Article III courts, whereas the "United States District Courts" are Article I or Article IV courts created by Congress for its legislative/administrative needs of its territories.

14.] The term "District Court of the United States" commonly describes Article III courts or courts of the United States, and not the legislative/administrative courts for its territories.

15.] Though the judicial system set up in a territory of the United States is a part of federal jurisdiction, the phrase "court of the United States" when used in federal statute is generally construed as not referring to "territorial courts". As the High Court Stated:

The United States District Court is not a true United States court established under Article III of the Constitution to administer the judicial power of the United States therein conveyed. It is created by virtue of the sovereign congressional faculty, granted under Article IV, Section 3, of that instrument, of making all needful rules and regulations respecting the territories belonging to the United States. The resemblance of its jurisdiction to that of a true United States courts in offering an opportunity to non-residents of resorting to a tribunal not subject to local influence, does not change its character as a mere territorial court.

16.] This distinction is the reason why federal jurisdiction over a prosecution is more than a technical concept; it is a Constitutional requirement.

17.] "All federal crimes are statutory." Doble, "Venue and Criminal Cases in the United States District Court," "... [0]n the other hand,

since all Federal Crimes are statutory and all criminal prosecutions in the Federal territorial courts are based upon Acts of Congress". "Act of Congress" includes any act of Congress locally applicable to and in the District of Columbia, in Puerto Rico, in a territory or an insular possession. The fact that no jurisdiction exists with the United States to enforce federal criminal statutes, codes, laws until ownership and consent to accept jurisdiction over acquired lands has been published and filed in behalf of the United States, as provided in Title 40 U.S.C. Section 255, if in fact a State authorized a taking of a criminal prosecution is totally immaterial.

18.] The federal courts are limited both by the Constitution and by Acts of Congress.

19.] The jurisdiction of federal courts is defined in the Constitution at Article III for judicial courts; in Article I for legislative courts; and in Article IV for territorial courts. Some courts created by Acts of Congress have been referred to as "Constitutional Courts", whereas others are regarded as "Legislative Tribunals."

20.] Legislative court judges do not enjoy Article III guarantees; inherently judicial tasks must be performed by judges deriving power under Article III.

21.] "Any person charged with a petty offense may elect, however to be tried in the district court of the United States. The commissioner shall apprise the defendant of his right to make such election and shall not proceed to try the case unless the defendant after being so apprised, signs a written consent to be tried before the commissioner."

22.] "Law enforcement - Where serious crimes are committed.... district courts are available for the detection and prosecution of offenders." The district courts Article I, not District Courts Article III!

23.] "No Federal Legislative Jurisdiction without consent, cession or reservation. - It scarcely need to be said that unless there has been a transfer of jurisdiction (1) pursuant to clause 17 by Federal acquisition of land with State consent or by cession from the State to the Federal Government, or unless the Federal Government has reserved jurisdiction upon the admission of the State, the Federal Government possesses no legislative jurisdiction over any area within a State, such jurisdiction being for exercise entirely by the State,..."

24.] "Necessity of State Assent to Transfer of Jurisdiction to Federal Government: Constitutional consent. - The Federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over any area within the exterior boundaries of a State."

25.] Limitations on Areas Over Which Jurisdiction May Be Acquired by Consent of State Under Clause 17 ... They exclude from its purview places which were not purchased by the Federal Government, ..."

26.] "...since the amendment of section 355 of the Revised Statutes of the United States on February 1, 1940, which provided for formal acceptance in order to establish Federal jurisdiction" " ... any such jurisdiction, involves Federal questions,..."

27.] "U.S. v. Tully, 140 Fed 899 (1905); It is unfortunate that a murderer should go unwhipped of justice, but it would be yet more unfortunate if any court should assume to try one charged with a crime without jurisdiction of the offence ... it is upon the judgement and conscience of this court that the matter of jurisdiction must be decided."

28.] "The Constitution withholds froms Congress a plenary police power ... We always have rejected readings of the Commerce Clause and scope of federal power that would permit Congress to exercise police power."

29.] Act of Congress is defined and confined to "locally applicable to and in force in District of Columbia, Puerto Rico, in a territory or

insular possessions"

30.] Definition of: "State" by the definition the federal statutes for which the defendant in fact was "Indicted, Arrested, and convicted in the United States District Court for Hawaii were not even cognizable.

31.] No Public Law exists in which Congress constituted the United States District Court to "possess the judicial powers and exercise the jurisdiction of the district courts of the United States as exists for the District of Columbia and Puerto Rico district courts. Contary to the claim of the United States District Court's claim of jurisdiction, both the Constitution's Article III and the Judiciary Act of 1789, Statute I §99 deprives the District Court of that jurisdiction and secondly, by the plain language of 18 U.S.C. § 3231, it is the "district courts of the United States" shall have "original over all criminal proceedings in the United States district courts".

32.] United States District Courts limited jurisdiction for only civil suits is a matter of stare decisis. "The Constitution Article 3 § 2 limits the exercise of judicial power to cases and controversies. The term controversies, if distinguishable at all from 'cases', is so in that it is less comprehensive than the latter, and includes only suits of a civil nature."

33.] "Article 3 Courts are law courts, equity courts, .... They sit to determine cases and controversies. But Article I courts have no such restrictions. They need not be confined to cases of controversies of Article III, but can dispense legislative largesse."

34.] When the United States District Court, exercised the district court of the United States outside of the clear territorial jurisdiction laid out for the United States in Article I, Section 8, Clause 17 it was "usurpation of judicial power".

35.] Pursuant to 18 U.S.C. § 3401, the Judges of the United States

courts are required to proceed in all criminal proceedings under the Rules as promulgated by the Supreme Court, which Rule 1 (a) (1) provides: "These rules govern in all criminal proceedings", but thereafter, has no provisions with which the United States District Courts, Article III Courts could have adjudicated statutory violations confined to district courts of the United States Article I courts.

36.] The definition of "State" will specifically "include state of the United States". § 513 (5), this Title 18 federal statute is for violations justiciable in a "district court of the United States". Yet when Title 18 § 921 based allegedly upon the interstate or foreign commerce clause, the term "State" includes the District of Columbia and other federal states defined by Rule 1 (b) (9), but does not include a "state of the United States". The prosecution under "Color of law, authority, and process did deceive the Grand Jury into issuing indictment(s) which seem to be founded on a convenient disregard for the word "include" as to what the government's jurisdictional area is "included" for exercise of its statutory authority. Title 18 § 5 description of the United States, is the same as that of Article I, Section 8, Clause 17 the same as throughout out its history and is further corroborated by your FCrRP Rule 54 (c) "Act of Congress" (a federal statute) "Includes any act of Congress locally applicable to and in force in the District of Columbia ..." The Supreme Court clarified any misinterpretation of the word "include". "Include or the participial form thereof is defined to comprise within, to hold, to contain, shut up, and synonyms are enclose, contain ..." Therefore, due to the fact that the federal statutes for which the defendant in fact was accused, by Title 18's definitions did not "include" the geographical location in which the alleged criminal activity took place. By the doctrine of "inclusio unius est exclusio alterius" the Statutes were not justiciable by the U.S. Attorney's office in the alleged Plaintiff.

37.] The Supreme Court in distinguishing between an Article I court, the district courts of the United States, and Article III United States District Courts "further held: " ... an Article I court could make its adjudications without regard to the limitations of Article III. On the other hand, as the Court in O'Donoghue v. United States, supra observed, Article III Courts could not be endowed with the administrative and legislative powers which Article I tribunals or agencies exercise."

38.] Historically the only Statutes to be enforced Nationally required an amendment to the Constitution similar to that of the Eighteenth Amendment, At this time, no Amendments of the Constitution exists to authorize statutory authority which would authorize U.S. Attorney's to enforce federal statutes which are legislated only for Article I, Section 8, Clause 17 territories of the United States. Even if this was true the only courts cognizable of crimes, statute violations are the district courts of the United States Article I courts, Not District Courts of the United States Article III courts of civil jurisdiction.

39.] By claiming the matter/case as criminal the United States District Court for the District of Hawaii displayed a persistent disregard for rules laid out by the Supreme Court as promulgated. Also violated the sworn Oath of Office and failed the test of continuing service for good conduct, for the presiding Judge as they should understand their total lack of lawful authority to hear "criminal matters".

"Without Prejudice"

Respectfully submitted by: Michael-Trent Barnes, In Proper Persona,  
Dated this 8th day of July, 2007 C.E. AS: Sui Juris, in Pro Se, with the explicit reservation of all my unalienable birth Rights of an American National, [C]itizen of the California Republic.

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